

On January 16, 2008 appellant, then a 38-year-old electrician, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries in the performance of duty on January 3, 2008. On the claim form he stated that the floor gave way and he fell about three feet. In a January 31, 2008 letter, the employing establishment indicated an investigation of the incident had been completed and the report showed that a floor panel had given way and appellant slid to a seated position on the raised floor. The Office accepted the claim for a back

contusion. Appellant stopped working on January 4, 2008 and received continuation of pay. In a note dated February 19, 2008, attending internist Dr. Eunice Shakir reported that appellant was cleared to return to regular duty on February 20, 2008.

On March 25, 2008 appellant filed a claim for compensation (Form CA-7) from February 28 to April 2, 2008. In a treatment note dated March 4, 2008, Dr. Hawani Temesgen, an internist, noted a January 3, 2008 injury and diagnosed chronic low back pain. He stated that appellant could work light duty, with a 25-pound lifting restriction, from March 6 to 21, 2008 and could resume regular work on March 22, 2008.

In an attending physician's report (Form CA-20) dated March 20, 2008, Dr. Temesgen described a history of appellant falling at work when the floor caved in and also noted a long-standing history of back pain. He diagnosed arthropathy of lumbar facet, low back pain and contusion. Dr. Temesgen checked a box "yes" the condition was employment related and indicated that appellant was disabled from January 4 to 30, 2008 and March 17 to 19, 2008. Appellant also submitted a March 19, 2008 treatment note from Dr. Yusuf Mosuro, an anesthesiologist, diagnosing right facet arthropathy L3-5 and indicating that he was unable to work March 19 to April 2, 2008.<sup>1</sup>

By decision dated May 19, 2008, the Office denied the claim for compensation from February 28 to April 2, 2008. It found that the medical evidence was insufficient to establish an employment-related disability.

Appellant requested a hearing before an Office hearing representative, which was held on October 8, 2008. The record contains a note dated February 19, 2008 from Dr. Shakir stating that appellant's complaints were not consistent with the mild injury that occurred and no further sick leave with this injury would be supported. In a June 4, 2008 Form CA-20, Dr. Temesgen indicated that appellant was disabled from March 19 to April 23, 2008.

In a report dated September 11, 2008, Dr. Temesgen stated that appellant had chronic right-sided back pain since 2006 that was exacerbated by an injury on January 3, 2008. He reported that appellant stated that he was not able to go back to work due to persistent pain.

In a report dated October 24, 2008, Dr. Allan Macht, a surgeon, reported a history of a January 3, 2008 injury when a floor collapsed and appellant fell onto a concrete subfloor and pipes. He provided results on examination and diagnosed back contusion and lumbalgia. Dr. Macht stated that appellant had sustained a back injury on January 3, 2008 that "greatly changed his preexisting back condition." He stated that appellant received a "severe blow to the back when [appellant] fell and landed on his back," that 75 percent of the back problem was due to the January 3, 2008 accident and he was disabled since February 28, 2008.

By decision dated December 23, 2008, the hearing representative affirmed the May 19, 2008 Office decision. The hearing representative found that the medical evidence did not establish an employment-related disability from February 28 to April 2, 2008.

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<sup>1</sup> On June 6, 2008 appellant submitted a note from Dr. Mosuro dated March 19, 2008 stating that appellant was treated for low back pain and was unable to work from March 19 to April 23, 2008.

Appellant requested reconsideration and submitted additional evidence. In a report dated December 15, 2008, Dr. Ian Gordon, an orthopedic surgeon, stated that appellant was treated for an injury when he fell through a floor on January 3, 2008. He stated that appellant complained of chronic back pain and could not work as an electrician. Dr. Gordon diagnosed annular tear, lumbar disc with degeneration. In a July 29, 2009 report, Dr. Jeffrey Gaber, an internist, provided a history of appellant falling on his back and buttocks when a floor collapsed. He stated that appellant suffered a significant contusion and chronic and severe sprain injury of the lumbar spine, superimposed on preexisting problems with the lower back. Dr. Gaber opined that appellant had been unable to work since February 28, 2008 and “It is clear that falling three (3) feet directly onto his back and concrete area caused the problems with the lower back that rendered him fully disabled. My opinions are stated within a reasonable degree of medical certainty.”

By decision dated October 23, 2009, the Office reviewed the case on its merits and denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>4</sup>

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>5</sup> Findings on examination are generally needed to support a physician’s opinion that an employee is disabled for work. When a physician’s statements regarding an employee’s ability to work consist only of repetition of the employee’s complaints that he hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>6</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>5</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>8</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

### **ANALYSIS**

The Office accepted a back contusion as a result of an employment incident on January 3, 2008. Appellant has claimed compensation for wage-loss commencing February 28, 2008 and it is his burden of proof to submit the necessary medical evidence to establish the claimed period of disability.<sup>11</sup>

As the above legal precedent illustrates, the medical evidence must be based on a complete and accurate background and must provide medical rationale in support of the opinion offered. None of the medical evidence is sufficient to establish an employment-related disability for the period claimed. The contemporaneous medical evidence consists of brief notes or form reports that do not provide a complete history or a rationalized medical opinion. Dr. Temesgen referred to chronic low back pain and light-duty work from March 6 to 21, 2008, without further explanation. He also indicated briefly in a Form CA-20 total disability from March 17 to 19, 2008, again without additional explanation. Dr. Mosuro diagnosed right facet arthropathy, which is not an accepted employment-related condition and he states that appellant was disabled from March 19 to April 2, 2008 and also until April 23, 2008, without providing a complete history and a rationalized medical opinion on causal relationship with employment.

Appellant subsequently submitted narrative reports from Drs. Macht, Gordon and Gaber. In his October 24, 2008 report, Dr. Macht refers to a history of a "severe blow" to the back on January 3, 2008. Neither the factual or medical history of record supports such a finding. The witness statements from the incident report do not suggest a severe blow was sustained, nor did the initial treatment from Dr. Shakir report a severe blow to the back in the January 3, 2008 incident. Dr. Macht did not provide a complete and accurate factual and medical history and his statement that appellant was disabled from February 28, 2008 is not accompanied by medical rationale.

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<sup>8</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>11</sup> Although the record indicates that appellant filed additional claims for compensation after April 2, 2008, the Office decisions addressed the claim for compensation from February 28 to April 2, 2008.

Dr. Gordon did not discuss disability commencing February 28, 2008. In addition, he diagnosed an annular tear with disc degeneration, which is not an accepted condition. Dr. Gordon did not provide a complete history or a rationalized medical opinion on causal relationship between the diagnosed condition and the January 3, 2008 employment injury.

With respect to Dr. Gaber's July 29, 2009 report, he noted preexisting back problems but he did not provide a complete medical history describing the nature and extent of the preexisting back condition. Dr. Gaber did not indicate what specific diagnosed condition(s) he felt were causally related to the incident. He stated, "it is clear" that the fall on January 3, 2008 caused disability from February 28, 2008. Dr. Gaber's report does not, however, explain why he felt this was clear, with reference to the relevant contemporaneous medical evidence, such as treating physician Dr. Shakir's opinion that appellant was able to work regular duty as of February 20, 2008.

On appeal, appellant has argued that the medical evidence was sufficient to establish the claimed employment-related disability. For the reasons noted, the Board finds that the medical evidence of record is not sufficient to establish the claimed period of disability commencing February 28, 2008. It is appellant's burden of proof and the Board finds that appellant did not meet his burden in this case.

### **CONCLUSION**

The Board finds that appellant has not established an employment-related disability commencing February 28, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 23, 2009 is affirmed.

Issued: August 5, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board